THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.17562 of 2001

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The petitioner seeks a Writ of *Certiorari qua* the order dated 04-05-2000 passed in L.G.C. No.176 of 1998 by the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act').

The writ petitioner is the first respondent in L.G.C. No.176 of 1998 filed by the respondents 1 and 2 herein under Section 8(1) of the Act against the Institution and two others for eviction on the premise that they are the land grabbers. The applicants claim to have purchased the property by means of a registered sale deed dated 05-07-1993 from one Mirza Laiq Ali Baig and Mrs. Asgari Begum. Mirza Laiq Ali Baig in turn said to have purchased the property under a registered sale deed dated 26-09-1978 from one Savita Ramesh Patil and six others who in turn purchased the property by means of a registered sale deed dated 27-04-1965 from the original owner namely Smt. Ashrafunnisa Begum. It is further stated that respondents 2 and 3, before the Special Court, tried to interfere with the possession of the applicants, therefore the suit in O.S. No.2113 of 1996 was filed on the file of the X Assistant Judge, City Civil

Court, Hyderabad.

In the concomitant application in I.A. No.841 of 1996 they obtained an interim injunction against the respondents. However,

the respondents grabbed the land in the month of August, 1997 and erected a temporary shed with bamboos and affixed a board mentioning the name of the first respondent-institution.

Respondents 1 to 3 remained *ex parte* before the Special Court. One of the applicants was examined as a witness and Exs.A-1 to A-3 were filed before the Special Court. Appreciating the evidence of the applicants, the learned Special Court allowed the application and directed the respondents to vacate and deliver the possession of the schedule land within four months from the date of the order. It is that order of the Special Court is now being assailed in the instant writ petition.

Sri K. Vinaya Kumar, learned counsel for the writ petitioners, represents that although the writ petitioners remained *ex parte* before the Special Court, the order seems to be illegal, since the validity of Ex.A-1, sale deed, has not been considered under which the respondents herein purchased the property from Mirza Liaq Ali Baig. According to the learned counsel, under Ex.A-2, sale deed, Mirza Liaq Ali Baig purchased the property on behalf of the institution with an intention to run Madrasa therein and funds indeed had flown from the institution. Therefore, Mirza Liaq Ali Baig had no competency or authority to sell the property in favour of the applicants. True, although, the writ petitioner and two

others remained *ex parte* before the Special Court, it is a plain obligation on the part of the Court to see whether there has been any legal evidence to act upon safely before passing an order.

The question that falls for determination in the instant writ petition is in what capacity Mirza Liaq Ali Baig purchased the property under the original of Ex.A-2 and could he validly convey the title to the respondents herein.

The answer to the question depends mainly on the interpretation of terms of Ex.A-2, sale deed. Ex.A-2 has been read to us in the open Court and we too have considered the recitals therein showing our anxious consideration to it.

In no unmistakable terms, the deed stands in the name of Mirza Liaq Ali Baig. The deed further recites that he purchased the property with an intention to run a School. The deed further shows that funds have been flown from his pocket representing in the capacity of Meer Majlies of the institution. From the document it is obvious that Mirza Liaq Ali Baig is the ostensible owner since the sale deed stands in his name, but the real owner appears to be the institution, since the source of consideration is from the funds of the institution. In other words, Mirza Liaq Ali Baig is the Benamidar. That appears, *prima facie,* from a close scrutiny of Ex.A-2, sale deed. Section 41 of the Transfer of Property Act, 1882 is germane in the context to be considered. The Section reads as under:

"**Sec.41. Transfer by ostensible owner**:- Where,

> with the consent, express or implied,
> of the persons interested in immovable property,
> a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it:
>
> Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

From a plain reading of the provision excerpted herein above, it is obvious that the transaction will not become void, still it is open to the real owner to agitate before the appropriate Forum by instituting an appropriate and properly constituted *lis*.

As things stand, the respondents herein purchased the property for consideration under Ex.A-1, that is sufficient to constitute the *prima facie* case in their favour.

As per Section 10 of the Act, when the applicants are able to show a *prima facie* title in their favour, the burden shifts to the respondents to show before the Court that they are not the land grabbers. The allegations made *inter alia* in the application filed under Section 8(1) of the Act to the effect that the respondents grabbed the property illegally remained un-contravened. Therefore, we see no illegality that is said to have been committed by the learned Special Court in having passed the impugned order.

For the above reasons, the Writ Petition fails and is dismissed but under the circumstances there shall be no order as to costs.

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T. CH. SURYA RAO, J

Date: 11-10-2006

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G. CHANDRAIAH, J

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